

BEFORE THE MISSOURI REAL ESTATE COMMISSION

MISSOURI REAL ESTATE COMMISSION)	
)	
Petitioner,)	
)	
v.)	No. 19-0059 RE
)	
)	
THEODORE A. ELLIOTT)	
)	
Respondent.)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DISCIPLINARY ORDER**

On or about May 13, 2019, the Administrative Hearing Commission entered its Default Decision in the case of *Missouri Real Estate Commission v. Theodore A. Elliott*, No. 19-0059 RE. In that Default Decision, the Administrative Hearing Commission found that Respondent Theodore A. Elliott's real estate Broker license (license no. 1999020136) is subject to disciplinary action by the Missouri Real Estate Commission ("Commission") pursuant to § 339.100.2, (15), (16), and (19) RSMo.¹

The Commission has received and reviewed the record of the proceedings before the Administrative Hearing Commission including the properly pled complaint and the Default Decision of the Administrative Hearing Commission. The record of the Administrative Hearing Commission is incorporated herein by reference in its entirety.

Pursuant to notice and §§ 621.110 and 339.100.3, RSMo, the Commission held a hearing on October 2, 2019, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining the appropriate disciplinary action against Respondent's license. All of the members of the Commission were present throughout

¹ All statutory references are to the Revised Statutes of Missouri 2000, as amended, unless otherwise indicated.

the meeting, except Charles Misko. Further, each member of this Commission read the Default Decision of the Administrative Hearing Commission. The Commission was represented by Assistant Attorney General J. Austin Underhill. Respondent, having received proper notice and opportunity to appear, did not appear in person or through legal counsel. After being present and considering all of the evidence presented during the hearing, the Commission issues the following Findings of Fact, Conclusions of Law, and Order.

Based upon the foregoing the Commission hereby states:

I.

FINDINGS OF FACT

1. The Commission is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo, for the purpose of licensing all persons engaged in the practice as a real estate broker or salesperson in this state. The Commission has control and supervision of the licensed occupations and enforcement of the terms and provisions of §§ 339.010-339.205 and 339.710-339.855, RSMo.

2. The Commission hereby adopts and incorporates by reference the properly pled Complaint and the Default Decision of the Administrative Hearing Commission in *Missouri Real Estate Commission v. Theodore A. Elliott*, Case No. 19-0059 RE, issued May 13, 2019, in its entirety and takes official notice thereof.

3. The Commission set this matter for disciplinary hearing and served notice of the disciplinary hearing upon Respondent in a proper and timely fashion. Respondent failed to appear in person or through legal counsel at the hearing before the Commission

4. This Commission licensed Respondent Theodore A. Elliott as a real estate Broker, license number 1999020136. Respondent's Broker license was not current at all times relevant

to this proceeding. On April 26, 2017, Respondent's Broker license was suspended pursuant to §324.010, RSMo (HB600) and on June 30, 2018, Respondent's Broker license expired.

II.

CONCLUSIONS OF LAW

5. This Commission has jurisdiction over this proceeding pursuant to §§ 621.110 and 339.100, RSMo.

6. The Commission expressly adopts and incorporates by reference the properly pled complaint and Default Decision issued by the Administrative Hearing Commission dated May 13, 2019, in *Missouri Real Estate Commission v. Theodore A. Elliott*, Case No. 19-0059 RE, takes official notice thereof, and hereby enters its conclusions of law consistent therewith.

7. As a result of the foregoing, and in accordance with the Administrative Hearing Commission's Default Decision dated May 13, 2019, Respondent's real estate Broker license, number 1999020136, is subject to disciplinary action by the Commission pursuant to § 339.100.2 (15), (16), and (19) RSMo.

8. The Commission has determined that this Order is necessary to ensure the protection of the public.

III.

ORDER

Having fully considered all the evidence before the Commission, and giving full weight to the Default Decision of the Administrative Hearing Commission, it is the **ORDER** of the Commission that the real estate Broker license of Theodore A. Elliott (license no. 1999020136) is hereby **REVOKED**. All evidence of Respondent's licensure shall be immediately returned to the Commission within 30 days of this Order along with a Closing of a Real Estate Brokerage/Sole Proprietorship form, if Respondent has not already done so.

The Commission will maintain this Order as an open, public record of the Commission as provided in Chapters 339, 610 and 324, RSMo.

SO ORDERED, EFFECTIVE THIS 7TH DAY OF OCTOBER, 2019.

MISSOURI REAL ESTATE COMMISSION


Terry W. Moore, Executive Director

Before the
Administrative Hearing Commission
State of Missouri



MISSOURI REAL ESTATE COMMISSION)
)
Petitioner,)
)
v.)
)
THEODORE A. ELLIOTT)
)
Respondent,)

No. 19-0059

DEFAULT DECISION

On January 18, 2019, Petitioner filed a properly pled complaint seeking to discipline Respondent. Respondent was served with a copy of the complaint and our notice of complaint/notice of hearing by personal service on March 20, 2019.

More than thirty days have elapsed since Respondent was served. Respondent has not filed an answer or otherwise responded to the complaint.

In accordance with § 621.100.2, RSMo 2016, we enter a default decision against Respondent establishing that Petitioner is entitled to the relief requested in the complaint. This default decision shall become final and may not be set aside unless a motion is filed with this Commission within thirty days of the date of this order establishing good cause for not responding to the complaint and stating facts constituting a meritorious defense.

SO ORDERED on May 13, 2019.


RENEE T. SLUSHER
Commissioner

**BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI**

FILED

January 18, 2019

ADMINISTRATIVE
HEARING COMMISSION

MISSOURI REAL ESTATE
COMMISSION
3605 Missouri Boulevard
P.O. Box 1339
Jefferson City, MO 65102

Petitioner,

v.

Case No. _____

THEODORE A. ELLIOTT
411 N. Kingshighway
P.O. Box 909
Sikeston, MO 63801
(573) 471-5502

Respondent.

COMPLAINT

Petitioner, the Missouri Real Estate Commission ("MREC"), by and through the Attorney General of the State of Missouri, brings this action against Respondent, and states as follows:

1. The MREC is an agency of the State of Missouri, created and established pursuant to § 339.120, RSMo¹, for the purpose of executing and enforcing the provisions of Chapter 339, RSMo – Real Estate Agents, Brokers, Appraisers, and Escrow Agents.

¹ All statutory citations are to the most recent version of the Revised Statutes of Missouri ("RSMo"), as amended, unless otherwise noted.

2. Respondent Theodore A. Elliott ("Elliott") is a licensed real estate broker, holding license number 1999020136, which was issued on June 28, 2016.

3. Elliott's license expired on June 30, 2018.

4. Jurisdiction and venue are proper before the Administrative Hearing Commission under §§ 621.045 and 339.100.2, RSMo.

5. Elliott received notices dated January 26, 2017 from the Department of Revenue ("Department") that he had outstanding balances due on his 2010, 2011, 2012 and 2013 Missouri Individual Income Tax returns. The notices informed Elliott that his professional license would be suspended pursuant to § 324.010, RSMo, on April 16, 2017, if he did not: (1) make satisfactory arrangements with the Department for payment of the balances due, (2) pay the amount in protest, or (3) inform the Department that he will contest the amount due.

6. On April 26, 2017, Elliott's real estate license was suspended. It remains suspended at the time of this proceeding.

7. On April 26, 2017, the MREC sent a letter by certified mail to Elliott at 411 N. Kingshighway, P.O. Box 909, Sikeston, Missouri 63801, his address registered with the MREC, informing him that his license had been suspended by operation of law and stating that he must return his license to the MREC within 10 days.

8. On June 2, 2017, the MREC sent a letter to Elliott stating that it had not received his broker license as required by the April 26, 2017 letter. The MREC gave Elliott until July 2, 2017 to return his license and explained that his failure to do so could result in discipline against his license.

9. The MREC received no response from Elliott to either the April 26, 2017 or June 2, 2017 letter.

10. Section 324.010, RSMo, states in relevant part:

All governmental entities issuing professional licenses, certificates, registrations, or permits pursuant to sections 209.319 to 209.339, sections 214.270 to 214.516, sections 256.010 to 256.453, section 375.014, sections 436.005 to 436.071, and chapter 317 and chapters 324 to 346 shall provide the director of revenue with the name and Social Security number of each applicant for licensure with or licensee of such entities within one month of the date the application is filed or at least one month prior to the anticipated renewal of a licensee's license. If such licensee is delinquent on any state taxes or has failed to file state income tax returns in the last three years, the director shall then send notice to each such entity and licensee. In the case of such delinquency or failure to file, the licensee's license shall be suspended within ninety days after notice of such delinquency or failure to file, unless the director of revenue verifies that such delinquency or failure has been remedied or arrangements have been made to achieve such remedy.

11. Section 339.100.2, RSMo states in relevant part:

The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any

person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860, or of any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860;

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

(19) Any other conduct which constitutes untrustworthy, improper, or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

12. Cause exists to discipline Elliott's license pursuant to § 339.100.2(15), RSMo, because Elliott has failed to respond in writing to the MREC's written requests or inquiries, in violation of 20 CSR 2250-8.170(1), which provides in relevant part:

Failure of a licensee to respond in writing, within thirty (30) days from the date of the commission's written request or inquiry, mailed to the licensee's address currently registered with the commission, will be sufficient grounds for taking disciplinary action against that licensee.

13. Cause exists to discipline Elliott's licenses pursuant to § 339.100.2(15), RSMo, because Elliott has failed to surrender his license, in violation of 20 CSR 2250-8.155(2)(A)(3), regarding Closing a Real Estate Firm, which provides in relevant part:

(2) Revocation/Suspension

(A) Individual Broker or Corporation, Partnership, or Association. Upon the revocation or suspension of an individual broker, corporation, partnership, or association, the individual broker or designated broker shall—

(3) Notify all licensees associated with the brokerage of the revocation/suspension and return all licenses held by the broker to the commission[.]

14. Section 339.040, RSMo, sets forth the criteria that must be established to hold a real estate broker's license and states, in relevant part:

1. Licenses shall be granted only to persons who present, and corporations, . . . whose officers, . . . present, satisfactory proof to the commission that they:

(3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

15. Elliott's failure to respond and failure to return the license is evidence that Elliott is not competent to transact the business of a broker or

salesperson in such a manner as to safeguard the interest of the public. Therefore, there would be grounds under § 339.040, RSMo, for the MREC to deny a license to Elliott, and thus provides cause for discipline under § 339.100.2(16), RSMo.

16. Elliott's conduct, as alleged in this Complaint, constitutes untrustworthy, improper, and/or fraudulent business dealings and/or demonstrates bad faith, incompetence, misconduct, and/or gross negligence, providing cause for discipline under § 339.100.2(19), RSMo.

Accordingly, Petitioner asks this Administrative Hearing Commission to conduct a hearing in this case pursuant to §§ 621.015 to 621.205, RSMo, and thereafter issue its findings of fact and conclusions of law that Petitioner may discipline Respondent Elliott's real estate broker license under Chapter 339, RSMo, and the regulations promulgated thereunder.

Respectfully submitted,

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